IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

WP(C).No. 29034 of 2006(F)

PETITIONER:

SMT.GRACY THOMAS, W/O.JOHN MATHEW,
ANTHIKKAD HOUSE, PATTIKKAD P.O.,
THRISSUR.(HEADMISTRESS, GOVT. U.P. SCHOOL, MOORKANIKKARA.

BY ADV. SRI.S.EASWARAN

RESPONDENTS:

----

1. DEPUTY DIRECTOR OF EDUCATION,
THRISSUR.

2. THE ASSISTANT EDUCATIONAL OFFICER,
THRISSUR EAST, THRISSUR.

3. K.S. PADMINI, HEADMISTRESS,
GOVT.U.P.SCHOOL, MOORKANIKKARA.

BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C) NO.29034/06 F

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF ORDER NO.A5/3000/06 DATED 2.11.2006 ISSUED BY THE FIRST RESPONDENT.

EXT.P2 TRUE RELEVANT EXTRACT OF THE ATTENDANCE REGISTER OF G.U.P.S., MOORKANIKKARA.

EXT.P3 COPY OF THE COMPLAINT DATED 2.2.2006 SUBMITTED BY SRI. P.S. KRISHNANKUTTY.

EXT.P4 COPY OF THE REPORT SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P5 TRUE COPY OF THE LETTER NO.A2-15980/06 DATED 29.8.2006 ISSUED BY THE 1ST RESPONDENT.

EXT.P6 COPY OF THE LETTER SENT BY PETITIONER TO R1.

EXT.P7 COPY OF LETTER DT. 9.10.2006 SENT BY PETITIONER TO R1.

EXT.P8 TRUE COPY OF COMPLAINT DT. 25.5.06.

EXT.P9 TRUE COPY OF THE EXPLANATION SUBMITTED BY PETITIONER TO R2.

EXT.10 TRUE COPY OF COMPLAINT DT. 21.6.06 SUBMITTED BY PETITIONER.

EXT.P11 TRUE COPY OF LETTER ISSUED BY THE CENTRE FOR ENVIRONMENT AND DEVELOPMENT.

EXT.P12 TRUE COPY OF THE LETTER DT. 24.4.2006 ISSUED BY THE PETITIONER.

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C NO. 29034 OF 2006 F

Dated this the 20th November, 2006

JUDGMENT

Petitioner seeks to challenge Ext.P1 order. It is an order by which petitioner and four other Headmistresses have been transferred from their respective Schools. Petitioner has been transferred from GUPS, Moorkanikkara to Govt. Training School, Echippara. Case of petitioner, in brief, is as follows:

The said order is not issued on administrative grounds, but on the basis of certain facts and circumstances. First respondent forwarded Ext.P3 complaint received against her from one Shri P.S. Krishnankutty. Petitioner submitted Ext.P4 detailed Report. There was no further action. Then, she received another letter from first respondent stating that a complaint has been received from Shri P.P. Thankachan, husband of Smt. Lissy Joseph, a teacher working under the petitioner (Ext.P5). Petitioner submitted a reply. In fact, the case of the petitioner is that petitioner had sought for initiation of disciplinary

proceedings against Smt. Lissy Joseph on the complaint received from certain students (Ext.P7). It is while so that transfer order was issued. Contentions of petitioner are that there is violation of Appendix III Part I KSR in the matter of relieving of the petitioner. It is stated that the petitioner is a self-drawing Officer and the second respondent has no authority to relieve the petitioner, and she can be relieved only when third respondent comes and joins the Government U.P. School, Moorkanikkara. It is also stated that report of transfer of charge of petitioner has to be made before an Headmistress is relieved from the School. Petitioner relies on the decision of this Court in Ramavarma Thirumulpad v. State of Kerala And Others (1985 (2) ILR 355) in support of this contention. It is also submitted that the transfer order is issued by first respondent based on the recommendations of the second respondent. This is not permissible, as there was no independent application of mind by first respondent, it is contended. Counsel for petitioner also invited my attention to the merits of the matter and

submitted that the charges against the petitioner are without any basis and do not warrant the order of transfer. Copy of the Report of enquiry conducted is also not served on the petitioner, it is stated. There is an addition of a new ground in the Counter Affidavit for justifying the transfer and that is also impermissible, it is contended.

2. A Counter Affidavit is filed by first respondent wherein it is, inter alia, stated as follows:

> *"3. The petitioner was transferred to G.T.S., Echippara in Thrissur District itself on administrative reasons. There were several complaints from the teachers, public men and persons from various walks of life regarding the behaviour of the Headmistress towards them. The complainants include the President of the Nadathara Grama Panchayath where the school is situated, the President of Malineekarana Mochana Committee, a Voluntary Association representing the public of the locality, the Secretary, Kerala School Teachers Association, Thrissur District Committee etc. All the complaints pointed to the acts of the petitioner which are not expected of a Headmistress. The then Assistant Educational*

Officer, enquired about the complaint and was of the conclusion that the allegations in the petitions were correct. The then Assistant Educational Officer conducted an enquiry with a prior information to the Headmistress. The Headmistress and all the teachers were present and Assistant Educational Officer recommended disciplinary action against the petitioner and to transfer her from that school. This enquiry was conducted on 23.03.2006. The present Assistant Educational Officer also recommended for enquiry by the Deputy Director. The Deputy Director also conducted an enquiry informing sufficiently early. The Headmistress and all teachers were present. The Deputy Director was convinced of the findings of the Assistant Educational Officers. The Deputy Director on her findings at the enquiry ordered to shift the Headmistress immediately from this school and to transfer out three more teachers to save the school from wreckage. Since there were no open vacancies existed the Headmistress who had submitted a request for transfer to this school was posted here and the petitioner was transferred. The transfer of the petitioner was in public interest and was not to provide the third respondent as alleged by

the petitioner.

5. Ext.P1 was issued in public interest and on administrative grounds. Since there were several allegations against the petitioner regarding her conduct as Headmistress which were against the interest of the school. The allegations are the following:

1) The petitioner did not admit several pupils of that locality to the school and the Assistant Educational Officer had to interfere for getting them admitted.

2) She misbehaved to the staff of the school.

3) She was absenting from the school continuously on the pretext of her official engagements which were not fully warranted.

4) She instead of encouraging pupils and staff in their action researches, thwarted them and even lapsed the fund of Rs.7,000/=

allotted by Centre for Environmental Development in recognition of a project put forth by the students under the guidance of a teacher.

5) Misbehaviour against staff of the school. She even abused a teacher who belonged to scheduled caste and insulted her.

6) Disrespected the President of the Grama Panchayath when he visited the school and abused him, which amounts to insubordination.

(7) The teachers of standard one to seven are compelled to teach nursery children with the students of those classes.

The enquiries by the Assistant Educational Officer and the Deputy Director proved these allegations. The Assistant Educational Officer recommended for disciplinary action and to shift the Headmistress from that school. The Deputy Director also was convinced of these and hence the

Headmistress was transferred from the school and the concerned Assistant Educational Officer in whose jurisdiction the new school is directed to watch the conduct of the petitioner. Further the petitioner was warned. Enquiries regarding other allegations that she had obtained inter-district transfer without prejudice to her seniority on fake grounds are continuing."

3. It is stated, inter alia, that several complaints from teachers, public men and persons from various walks of life were received regarding the behaviour of the Headmistress towards them, and that the complainants include the President of the Nadathara Grama Panchayat, President of Malineekarana Mochana Committee, a Voluntary Association, the Secretary of Kerala School Teachers' Association, Thrissur District, etc. It is stated that the AEO conducted an enquiry and found that the allegations are correct. It is further stated that the present AEO also recommended for enquiry by the Deputy Director. Thereafter, the Deputy Director conducted an enquiry and she

was convinced of the findings of the AEO, it is stated. Reference is made to various allegations in paragraph 5 of the Counter Affidavit and it is stated that the enquiry by the AEO and Deputy Director proved the case against the petitioner. It is stated that the AEO recommended for disciplinary action and to shift the petitioner from the School and the Deputy Director also was convinced of this and the petitioner was transferred.

4. A Reply Affidavit is filed denying the allegations and producing certain documents which go to the merits of the matter. Learned counsel for petitioner submits that this is a case where this Court should consider the matter on merits and quash the impugned order of transfer.

5. Having regard to the nature of the factual issues involved, I feel that the petitioner is to be relegated to the pursuit of the remedy by way of approaching the superior authority against the transfer order. I note that there is no specific allegation of malafides against the first respondent who has issued the order of transfer. In such circumstances, I feel that I

should relegate the petitioner to the pursuit of the remedy of approaching the appropriate superior authority against the transfer in so far as it relates to petitioner. Accordingly, the Writ Petition is disposed of without prejudice to the right of the petitioner to approach the superior authority.

K. M. JOSEPH, JUDGE

kbk.